

Morgan Lewis

Andrew D. Lipman

andrew.lipman@morganlewis.com

September 24, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CG Docket No. 17-59: In the Matter of Advanced Methods to Target and Eliminate
Unlawful Robocalls

Dear Secretary Dortch:

Securus Technologies, Inc. ("Securus"), by its undersigned counsel, submits this letter in response to the Consumer and Governmental Affairs Bureau's (the "Bureau") Public Notice seeking to refresh the record in the above-captioned proceeding regarding the Commission's efforts to combat unlawful robocalls.¹ Securus supports efforts by the Commission and industry to target and eliminate unlawful robocalls, but Securus shares concerns expressed by numerous other commenters in the record that these efforts may inadvertently cause harm to consumers without mechanisms in place to ensure that erroneously blocked calls can be unblocked as quickly as possible.

Securus applauds the Commission for recognizing the practical reality that "[a] challenge mechanism may be needed for voice providers that block calls" and encouraging providers who block calls to establish a means for a caller whose number is blocked to contact the provider and remedy the problem.² The Commission's *FNPRM* sought comment on potential mechanisms to ensure that erroneously blocked calls can be unblocked as quickly as possible and without undue harm to callers and consumers, and whether it should require providers who voluntarily block calls to provide a formal challenge mechanism.³ The Bureau seeks to refresh the record on how to

¹ *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls*, Public Notice, DA 18-842 (rel. Aug. 10, 2018) ("Public Notice").

² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9724, ¶ 54 (2017) ("Robocall FNPRM").

³ *Robocall FNPRM*, 32 FCC Rcd at 9726, ¶ 57.

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, DC 20004
United States

+1.202.739.3000
+1.202.739.3001

reduce the potential for false positives, including how providers can ensure quick resolution of false positives.⁴

As Commissioner Michael O’Rielly stated, “real people will be hurt, be inconvenienced, or lose opportunities from overaggressive call blocking mechanisms” and permissible widespread blocking “without adequate means to challenge ‘false positives’ ... serves as a potential recipe for future problems.”⁵ As others in the record have said, “[e]nsuring that erroneous blocking can be quickly fixed is critical to preventing undue harm to consumers and their voice providers that originate these calls on their behalf.”⁶ Even opponents of a mandatory challenge mechanism concede that call-blocking technology could “inadvertently sweep-in calls from legitimate numbers”⁷ and that the Commission’s informal complaint procedures are inadequate to address erroneous call-blocking.⁸

These concerns are particularly heightened in the context of calls placed by inmates of correctional facilities. Inmate telephone calls are practically the last collect call voice traffic in the country and are often mistaken for robocalls due to the fact that a computerized or recorded voice is the first sound a recipient hears upon answering the call. Further, telephone numbers assigned to inmate telephones cannot receive incoming calls, which may lead to them mistakenly being misidentified as “unused numbers.” 47 CFR § 64.1200(k)(2)(iii).

Strictly speaking, it should be impossible for a provider to block calls originating from an inmate telephone. Calls can be blocked under § 64.1200(k)(1) only if a number is identified by “the subscriber to which the originating number is assigned” (*i.e.*, the correctional facility or its service provider) as a number that should be blocked. Calls can be blocked under § 64.1200(k)(2) only if they originate from a number that cannot possibly be in service, which clearly would not be applicable in this situation; or if the blocking provider “has obtained verification from the allocatee [in this situation, the inmate calling provider] that the number is unused[.]” Nonetheless, service providers are liable to human error, and it is almost inevitable that some numbers that should not have been blocked occasionally will be. In those cases, there must be a swift and simple challenge method that will allow the originating provider to have calls unblocked immediately.

Additionally, it is common for all calls placed by inmates in a particular correctional facility to originate from a single telephone number. As a result, erroneous blocking of inmate calls originating from a telephone number assigned to a correctional facility’s inmate telephone system could result in hundreds, if not thousands, of inmates being unable to place entirely lawful calls to their family members, friends, attorneys, and others. The harm from erroneous blocking would be substantially exacerbated in the absence of a mechanism to ensure that the originating provider

⁴ *Public Notice*, at 3-4.

⁵ *Robocall FNPRM*, 32 FCC Rcd at 9757 (Statement of Commissioner Michael O’Rielly).

⁶ Comments of INCOMPAS, at 3 (filed Jan. 23, 2018).

⁷ Comments of CTIA-The Wireless Association, at 3 (filed Jan. 23, 2018); *see also* Comments of the Federal Trade Commission Staff, at 4 (filed Jan. 23, 2018).

⁸ Comments of The USTelecom Association, at 6-9 (filed Jan. 23, 2018) (explaining why the Commission’s complaint framework would not be sufficiently timely or accurate for resolving legitimate false positives in call blocking).

has a viable and immediate option to reverse the blocking of a particular originating telephone number.

Securus strongly supports proposals by other commenters who argue that providers that want to participate in voluntary call blocking should be required to develop practices for legitimate callers whose calls appear to be blocked.⁹ The INCOMPAS proposal, which would require providers to offer a readily discoverable challenge mechanism on their websites while leaving the particulars up to each carrier, presents a flexible approach to ensuring that consumers and other service providers, such as Securus, are able to submit a request to resolve erroneous call blocking issues. Comcast Corporation similarly supports requiring voice provider to offer a web-based mechanism or web-page for reporting of erroneously blocked calls.¹⁰ Non-carriers have also expressed support for the use of web-based mechanisms for redress of erroneous call blocking.¹¹ Without a challenge mechanism, callers will have to attempt to figure out workaround solutions for completing their blocked calls, such as changing phone numbers.¹² However, these workaround solutions are simply not options for correctional facility inmates.

Contrary to advocacy by some industry associations that requiring implementation of a challenge mechanism would be too rigid and stifle innovation, the Commission could simply adopt minimum requirements for a challenge mechanism and leave the details of implementation up to each service provider. As part of those minimum requirements, voice service providers that engage in voluntary call blocking should be required to provide readily discoverable contact information on their websites to assist consumers and other carriers in addressing erroneously blocked numbers, including contact information of any third-party call blocking service vendors.¹³

Further, as part of its minimum standards, the Commission should impose a very short deadline within which providers must unblock lawful calls following receipt of a facially valid challenge, in order to prevent unnecessary harm to consumers that would result from erroneous blocking.¹⁴ As NTCA states, "[t]he risks associated with legitimate calls failing to complete are greater than the annoyance of consumers continuing to receive an occasional illegal robocall."¹⁵ As

⁹ See Comments of INCOMPAS, at 3; *see also* Comments of the American Bankers Association, at 2 (filed Feb. 2, 2018) (expressing support for a challenge mechanism for banks and other callers whose lawful calls are erroneously blocked).

¹⁰ Comments of Comcast Corporation, at 4 (filed Jan. 23, 2018).

¹¹ Comments of Professional Association for Customer Engagement, Alorica, Inc. and the Consumer Relations Consortium at 4 (filed Jan. 23, 2018); *see also* Comments of Noble Systems Corporation, at 8 (filed Jan. 22, 2018) (stating that "it is necessary to offer a mechanism for called parties to review which calls have been blocked and a mechanism for call originators as to which numbers are presently tagged as being blocked").

¹² Comments of ACA International, at 9 (filed Jan. 23, 2018).

¹³ Comments of NCTA-The Internet & Television Association, at 2 (filed Jan. 23, 2018).

¹⁴ *Robocall FNPRM*, 32 FCC Rcd at 9726, ¶ 58 (seeking comment on whether providers should cease blocking calls as soon as practicable upon a credible claim by the caller that its call are being blocked in error).

¹⁵ Comments of NTCA-The Rural Broadband Association, at 3 (filed Jan. 23, 2018).

explained above, no working telephone number should ever be blocked without the affirmative action or consent of the customer or carrier to which that number has been assigned, so the burden should be on the blocking provider, not on the originating caller or its carrier, to verify the accuracy of a challenged blocking decision.

Accordingly, the Commission should obligate voice service providers who voluntarily block calls to immediately unblock a telephone number upon receipt of a facially valid challenge from an end user to whom that number has been assigned, a telecommunications carrier or interconnected VoIP provider to which that number has been allocated by NANPA, or a reseller of such a carrier's or provider's services. After unblocking a telephone number as the result of a challenge, the provider can reassess its initial blocking decision (which may very likely have been automated in some fashion) to determine whether the criteria for blocking were applied correctly in the first instance. Requiring implementation of a flexibly designed challenge mechanism, as proposed by INCOMPAS and discussed above, accompanied by a rapid unblocking mandate, strikes an appropriate balance between providing a viable path for redress for consumers and other service providers while avoiding undue burdens for providers.

Beyond requiring these minimum elements in a challenge mechanism (*e.g.*, a point of contact and an immediate unblock pending review), the Commission can leave the particulars regarding the mechanics of submitting a challenge, such as whether the challenge can take place via a telephone call or a specific web-page submission form, up to each carrier.

Finally, the Commission should not be persuaded by broad claims in the record that bad actors will take advantage of challenge mechanisms.¹⁶ It is highly unlikely as a practical matter that illegal robocallers who rely heavily on automated processes would challenge blocking of their calls through a mechanism that may be different for each provider that engages in voluntary call blocking. It would be far easier for them simply to switch to spoofing a different originating number. These concerns are particularly irrelevant if such a mandated mechanism is simply provision of a point of contact who is responsible for investigating and resolving erroneous blocks accompanied by a maximum time for the service provider to respond. The Commission should not permit the possibility for bad actors to take advantage of the system to leave consumers inadvertently in harm's way, particularly inmates who will need to rely on their service provider and/or family members and friends to resolve erroneous call blocking.

Accordingly, Securus urges the Commission to adopt a rule requiring implementation by voice service providers of a challenge mechanism to assist in ensuring swift resolution when lawful calls are inadvertently blocked, and immediate unblocking pending the provider's review of the challenge.

Please do not hesitate to contact the undersigned if you have questions about this submission.

¹⁶ Comments of The USTelecom Association, at 3 (filed Jan. 23, 2018).

Marlene H. Dortch
September 24, 2018
Page 5

Sincerely yours,

/s/ Andrew D. Lipman

Andrew D. Lipman
Counsel for Securus Technologies, Inc.